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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.G., a Person Coming Under the  
Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.M.,

Defendant and Appellant.

B211991

(Los Angeles County  
Super. Ct. No. CK 36693)

Appeal from an order of the Superior Court of Los Angeles County. D. Zeke Zeidler, Judge. Affirmed.

Deborah Dentler, under appointment by the Court of Appeal, for Defendant and Appellant.

James M. Owens, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

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J.M. appeals from the dependency court order taking jurisdiction of her daughter, A.G., while denying her reunification services with the child. We reject mother's contention that there was insufficient evidence to support either component of that order, and therefore affirm.

### **FACTS AND PROCEDURAL HISTORY<sup>1</sup>**

In October 2008, the dependency court took jurisdiction of four-year-old A.G. and denied reunification services to the girl's mother, J.M. (mother). The court did so after sustaining the allegations of an amended petition under Welfare and Institutions Code section 300 brought by respondent Los Angeles County Department of Children and Family Services (DCFS).<sup>2</sup> The amended petition alleged that A.G. had suffered or was at risk of suffering physical harm from mother (§ 300, subd. (a)) and that mother failed to protect minor (§ 300, subd. (b)) based on the following:

(1) Mother and A.G.'s father had a history of fighting with each other in front of A.G., culminating in a July 2008 incident where father ran mother over with his car, which, combined with mother's minimizing the severity of that incident, put A.G. at risk; and

(2) Mother had three other children, who were A.G.'s half siblings, each of whom ended up receiving permanent placement services due to mother's abuse of one child (Sibling 1) that included placing his hand on a hot stove, hitting him with a belt, and forcing him to kneel with his hands clasped behind his head for extended time periods. Such violent conduct, combined with mother's ongoing denial about prior conduct and her failure to appropriately address that conduct in previous court-ordered programs, placed A.G. at risk of harm and constituted neglect. The court also declined to order

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<sup>1</sup> As is often the case in these proceedings, the record is long and detailed. We have distilled the facts to those essential to our decision.

<sup>2</sup> All further undesignated section references are to the Welfare and Institutions Code.

reunification services for mother because her parental rights were terminated as to, or she failed to reunify with, her three other children. (§ 361.5, subd. (b)(10), (11).)

## **DISCUSSION**

### *1. Substantial Evidence Supports the Domestic Violence Allegation*

Domestic violence between spouses or domestic partners is grounds for assuming jurisdiction over their children under section 300 because of the actual and potential harm it creates. (*In re Heather A.* (1997) 52 Cal.App.4th 183, 194.) We will affirm the dependency court's order in this regard if it is supported by substantial evidence. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.)

No witnesses testified at the jurisdictional hearing, and the case was decided on the contents of various DCFS reports and their accompanying witness statements. Mother consistently denied any history of domestic violence with father and tried to minimize the incident. DCFS noted this and said it was difficult to establish a history of domestic violence. Father contended that when he ran over mother with his truck, it was an accident. By the time of the jurisdictional hearing, mother's counsel argued for dismissal of the domestic violence allegation because there was inconclusive evidence the incident was intentional, and mother was not sure what caused it. Mother contends on appeal that there was insufficient evidence to sustain that allegation. We disagree.

When police officers showed up to investigate the incident, mother had tire tracks on one leg and two broken ribs. She told the police that she and father were arguing in a parking lot, and that after she threw a glass of juice on father, he hit her with the truck as he drove away. The next day, she told a DCFS case worker that as she tried to exit the truck, father "stepped on the gas and ran over her." A third-party eyewitness told the police that she saw the couple arguing, and when mother left the truck and walked in front of it, father drove forward quickly and ran over mother, then drove off. Mother later obtained a domestic violence restraining order against father based on this incident. One day after the incident, A.G. told DCFS that mother threw water on father, and her

“father ran over my mother.” A.G. said she had to move out of the way quickly “because her father was also going to run her over.” Asked if her parents hit each other, A.G. said they “sock each other on top of their thighs,” and father always told mother to shut up. A.G. did not fear her mother, but she was afraid of father because he fought with mother. As part of an August 2008 psychological evaluation, mother confirmed that father had emotionally and physically abused her during the last 30 days, and that she had been emotionally and physically abused by her sexual partner or spouse during her lifetime. During a September 2008 DCFS interview, mother said she separated from the father of Sibling 1 because of domestic violence.

Taken as a whole, this evidence shows that mother’s previous relationships involved domestic violence. A.G.’s statements to DCFS that mother and father fought with and hit each other (albeit reportedly on their thighs) verified that this pattern continued in mother’s relationship with father. There is also strong evidence that father intentionally ran over mother and just missed running over A.G., as shown by the statements of A.G. and the third-party eyewitness. That mother believed this was intentional is shown by the restraining order she obtained against father. Thereafter, the domestic violence between mother and father suddenly and dramatically escalated. Despite that, mother minimized, and then denied, the intentional nature of father’s conduct. Mother’s minimization or denial of this incident, coupled with her past history of domestic violence, gives rise to an inference that such conduct might well continue if A.G. remained with mother. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1135 [in determining potential for future risk of harm, court may consider past events], disapproved on another ground by *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.) Based on this, the court was justified in concluding that mother and father had a history of domestic violence that posed a risk of future harm to A.G. unless she were

removed from the custody of both parents.<sup>3</sup> Maintaining jurisdiction over A.G. was, thus, proper.

We alternatively hold that mother's failure to challenge the jurisdictional order to the extent it was based on the risk posed by her past abuse of Sibling 1 allows us to affirm the order as it also rests on those allegations. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.)

## 2. *Sufficient Evidence Supports the Order Denying Reunification Services*

It is presumed in dependency cases that parents will receive reunification services with their children who have been declared dependents of the court under section 300. (§ 361.5, subd. (a); *Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 95.) Subdivision (b) of section 361.5 provides exceptions to that presumption and represents the Legislature's acknowledgement that providing reunification services might sometimes be fruitless. (*Cheryl P.*, *supra*, at p. 96.) When the court finds one of these exceptions by clear and convincing evidence, it need not provide reunification services. (§ 361.5, subd. (b).) Applicable here is subdivision (b)(10) and (11). Under, subdivision (b)(10), reunification services need not be provided if the court ordered termination of reunification services for any full or half sibling of the child currently at issue because the parent failed to reunify with the sibling, and if the court finds the parent did not

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<sup>3</sup> Mother contends the dependency court erred by improperly considering unsubstantiated claims of domestic violence that were reported in the earlier DCFS petitions involving A.G.'s siblings. This is so, she contends, because the amended petition in this case said nothing about past domestic violence with other partners, and because the available records from the earlier proceedings are at best uncertain about the existence of domestic violence. We disagree. Although the amended petition in this case was based solely on the current history of domestic violence between father and mother, as just noted, the court was entitled to consider mother's prior domestic violence history when evaluating the nature of the risk posed to A.G. and whether that risk might continue in the future. (*In re Diamond H.*, *supra*, 82 Cal.App.4th 1127 at p. 1135.) As for the evidence of past domestic violence, we have relied solely on mother's own statements as reported to DCFS in connection with *this* case, making any discussion about the contents of the records from her previous DCFS cases irrelevant.

subsequently make a reasonable effort to treat the problems that led to the sibling's removal from that parent. (§ 361.5, subd. (b)(10).) Similarly, reunification services need not be provided if the parental rights of a full or half sibling were permanently severed and the court finds that the parent has not subsequently made reasonable efforts to treat the problems that led to removal of the sibling from that parent. (§ 361.5, subd. (b)(11).) We review the dependency court's ruling under the substantial evidence standard. (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 519.)

Mother does not dispute that the first prong of this subdivision applies to minor's three half siblings, who were removed from mother during the years 1999 through 2005.<sup>4</sup> She contends, however, that DCFS failed to produce sufficient evidence to show that she failed to make reasonable efforts to treat the problems that led to the custody loss of her three other children.

We focus on Sibling 1, who was taken from mother because she burned his hands on a hot stove, beat him with a belt, and forced him to assume uncomfortable positions for long periods of time.<sup>5</sup> DCFS relied on the following to show that mother had not made a reasonable effort to treat that problem: (1) a June 2004 psychological evaluation by a Dr. de Armas, who concluded that even though mother had completed various court-ordered counseling programs, they "had little impact on [mother's] understanding of child needs [*sic*] and on her ability to change her behavior. [Mother] appears to suffer significant personality issues that very likely impact her perceptions and reactions"; (2) her statement in a June 2008 DCFS detention report that Sibling 1 was taken from her because she "physically disciplined him," and that she had completed all required

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<sup>4</sup> According to a DCFS report, two siblings were now in foster care and one had been adopted.

<sup>5</sup> These allegations from the 1999 petition concerning Sibling 1 were sustained by the dependency court. As a result, they have conclusive effect under the doctrine of collateral estoppel. (*In re Joshua J.* (1995) 39 Cal.App.4th 984, 992-993.) Because we affirm based on mother's failure to reunify with Sibling 1, we need not address mother's contention that there was insufficient evidence concerning the circumstances that caused her to lose custody of the other two siblings.

parenting and other counseling classes; and (3) a September 2008 DCFS interview where mother said she struck Sibling 1 with a belt just once, denied she had ever made him kneel in an uncomfortable position, and denied ever burning Sibling 1's hand on a hot stove, contending instead that the child accidentally grabbed hold of a hot iron.

Mother contends that she need not show she has cured her problems, only that she has taken reasonable steps to do so. She relies on the following as proof that she took such steps: (1) a June 1999 certificate of completion of a 12-session parenting education program; (2) a January 2004 letter from the director of a counseling center stating that mother completed one year of therapy dealing with child abuse and other related issues, had made good progress and learned how to cope with her problems, and recommended that she have custody of A.M., another of A.G.'s half siblings whom mother eventually lost to adoption; and (3) after A.G. was removed, mother expressed her willingness to do whatever was required to regain custody of her daughter and, on August 28, 2008, signed a document showing she had received referral information for mental health and domestic violence counseling services.

After mother's lawyer argued these points below, the court turned back to the question whether mother still denied intentionally burning Sibling 1's hand on a stove, prompting counsel to repeat mother's assertion that Sibling 1 grabbed an iron by mistake and then to ask the court whether it wanted to relitigate that matter. DCFS argued that despite mother's past and present counseling efforts, she still denied responsibility or fault as to her other children.

We agree with the dependency court's finding. This is not a case like *Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464, where mother's failure to entirely cure her drug problem did not justify denying her reunification services because she was taking reasonable steps to try and address the problem, or like *In re Albert T.* (2006) 144 Cal.App.4th 207, 216, where the mother successfully completed domestic violence counseling and education programs. In this case, Sibling 1 was taken from mother because she physically abused him. Even though a January 2004 evaluation in the case of another sibling believed mother had resolved the issue, a June 2004 report concluded

she had not and she suffered from personality issues that affected her perceptions of the incident. Even as of June and September 2008, mother was minimizing or denying what she did to Sibling 1. Her willingness to participate in domestic violence counseling and other forms of counseling in order to reunify with A.G. does not directly bear on the reasonableness of her efforts to treat the problems that led to the removal of Sibling 1. Mother's continued unwillingness or inability to recognize and admit what she did to Sibling 1 is at odds with reasonable efforts to treat that problem. Accordingly, the court did not err by denying reunification services with A.G. under section 361.5, subdivision (b)(10).

### **DISPOSITION**

For the reasons set forth above, the order taking jurisdiction of, and denying mother reunification services with, A.G. is affirmed.

RUBIN, ACTING P. J.

We concur:

BIGELOW, J.

BENDIX, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.